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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150311250-5474-01]

RIN 0648-BE97

**Fisheries of the Northeastern United States; Blueline Tilefish Fishery; Secretarial
Emergency Action**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action extended.

SUMMARY: This rule extends emergency permitting and possession limit regulations for the blueline tilefish fishery in waters north of the Virginia/North Carolina border that were implemented on June 4, 2015. This extension is necessary to continue to constrain fishing effort on the blueline tilefish stock while a long-term management plan is developed. The rule is expected to reduce fishing mortality and help ensure the long-term sustainability of the stock.

DATES: The expiration date of the emergency rule published on June 4, 2015 (80 FR 31864) is extended through June 4, 2016.

ADDRESSES: Copies the Environmental Assessment and Regulatory Impact Review (EA/RIR) and other supporting documents for this emergency action are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA, 01930. The EA/RIR is also accessible via the Internet at: <http://www.greateratlantic.fisheries.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

Background

This temporary final rule extends emergency permitting and possession limit regulations for the blueline tilefish (*Caulolatilus microps*) fishery in the Greater Atlantic Region (i.e, Federal waters north of the latitude of the Virginia/North Carolina border) as described in the original emergency action that published on June 4, 2015 (80 FR 31864). The initial temporary rule was implemented in response to a request for emergency action from the Mid-Atlantic Fishery Management Council. That temporary final rule included detailed information on the background, purpose, need, and justification to implement these emergency management measures, and that information is not repeated here.

Section 305(c) of the Magnuson-Stevens Act allows for the extension of an emergency action, which is otherwise effective for up to 180 days, for up to another 186 days, provided that certain criteria are met: 1) The public has had an opportunity to comment on the emergency regulation; and 2) in the case of a Council recommendation for emergency action, the Council is actively developing an fishery management plan (FMP) amendment or regulations to address the emergency on a permanent basis. NMFS accepted public comment on the initial emergency measures in the final rule through July 6, 2015; comments and responses are summarized below. The Mid-Atlantic and South Atlantic Fishery Management Councils are both working on long-term management measures for blueline tilefish along the Atlantic coast. The Mid-Atlantic Council has initiated an amendment to its Golden Tilefish FMP to add blueline tilefish fishery management measures to that FMP and manage the stock within its jurisdiction. Final action on

that amendment is expected to occur at the Council's February 2016 meeting so that rulemaking may be completed before this temporary extension expires. This extension does not change the measures already in place. NMFS is not accepting additional public comment on this extension, and has determined that all the necessary criteria have been met and, therefore, is extending these emergency measures.

Extended Emergency Management Measures

This temporary final rule extends the following management measures for blueline tilefish in the Greater Atlantic Region:

1. A requirement for commercial or charter/party vessels landing blueline tilefish in the Northeast region (i.e., north of the latitude of the Virginia/North Carolina border: 36° 33' 01.0" N. latitude) to hold a valid Northeast open access golden tilefish commercial or charter/party vessel permit, which are issued by the Greater Atlantic Regional Fisheries Office;
2. A commercial possession limit of 300 lb (136 kg) whole weight per trip; and
3. A recreational possession limit of seven blueline tilefish per person, per trip.

None of these management measures modify the existing possession regulations for golden tilefish, or any other species.

In addition to the efforts being made by the Mid-Atlantic Council, the South Atlantic Council is considering revisions to its Snapper Grouper FMP to modify blueline tilefish management measures that may or may not affect the Mid-Atlantic Council's management of this stock. Questions remain on potential stock structure of the species throughout its distribution and there is considerable uncertainty in the data and projections in the most recent benchmark stock assessment that are currently being explored. It is expected that the long-term

management of blueline tilefish fisheries will be improved once these scientific and policy issues are resolved. These extended emergency measures will continue to protect blueline tilefish in the Greater Atlantic Region while allowing the Councils more time to finalize their work.

Comments and Responses

We received numerous public comments prior to implementation of the emergency action, primarily from fishermen who were opposed to overly-restrictive possession limits on blueline tilefish. Overall, the concerns raised in these comments were addressed by the management measures that we implemented. We received three comments during the original rule's comment period, and these are summarized below.

Comment 1: One comment was from a North Carolina-based commercial fishing organization. The commenter suggested that the blueline tilefish possession limits implemented by the rule disproportionately impacted commercial fishing vessels while not equally restraining recreational fishing vessels.

Response: According to the analyses in the EA (see **ADDRESSES**), the possession limits implemented by NMFS were expected to have minor negative impacts on both commercial and recreational fishing vessels. In recent years, only 18 percent of commercial trips landed more than 500 lb (227 kg) of blueline tilefish, and in 2014, 94 percent of landings were derived from only six vessels (out of 81 active vessels). Therefore, the commercial possession limit of 300 lb (136 kg) was not expected to impact the vast majority of vessels in the fishery, and by design, reduces incentives to target blueline tilefish. Similarly, in the recreational fishery in recent years, only 12 percent of charter/party trips landed more than seven fish per person. Therefore, impacts on the overall commercial and recreational fisheries were projected to be comparable, with little impact on the vast majority of trips.

Comment 2: One comment from a New Jersey recreational fisherman opposed the recreational possession limit, stating it was too restrictive.

Response: As noted in the response above, a minority of recreational trips are likely to be affected by the possession limit of seven fish per person. The objective of the emergency rule was to prevent further expansion of catch on this species, and we believe the seven-fish possession limit to be appropriate, and consistent with the recommendations of the Council. Additionally, the blueline tilefish possession limits do not impact the possession limits of golden tilefish or other species.

Comment 3: One comment was from a recreational fisherman who was opposed to a possession limit of one fish per vessel (Alternative 2 in the EA).

Response: NMFS agrees that the possession limits under Alternative 2 would have been more restrictive, and likely to result in greater negative impacts on a higher proportion of fishery participants. NMFS chose to implement the possession limit of seven fish per person to help constrain fishing effort, while still allowing the fishery to continue.

Classification

The Regional Administrator, Greater Atlantic Region, NMFS, has determined that the emergency measures extended by this temporary rule are necessary for the conservation and management of the blueline tilefish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

Under 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness of this action. Because the extension of these emergency measures contains regulations already in place, it is contrary to public interest to allow them to expire. As described more fully in the original emergency action (80 FR 31864; June 4, 2015),

the reasons justifying promulgation of the rule on an emergency basis make a delay in effectiveness contrary to the public interest. The possession limits implemented for recreational and commercial blueline tilefish vessels fishing in Federal waters north of the Virginia/North Carolina border are needed to constrain fishing mortality on the stock that would otherwise be unregulated. To provide protection for blueline tilefish, and to allow additional time for the Council to develop an appropriate long-term solution for the management of this stock, expediting these emergency measures is necessary.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from OMB review.

This rule is exempt from the otherwise applicable requirement of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 24, 2015

Eileen Sobeck,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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